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Supreme Court of the United States

OCTOBER TERM, 1942

No. 850

MILDRED MAYO DEAL, *Petitioner,*

v.

VENDA C. ABRAMSON, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE EIGHTH
CIRCUIT.

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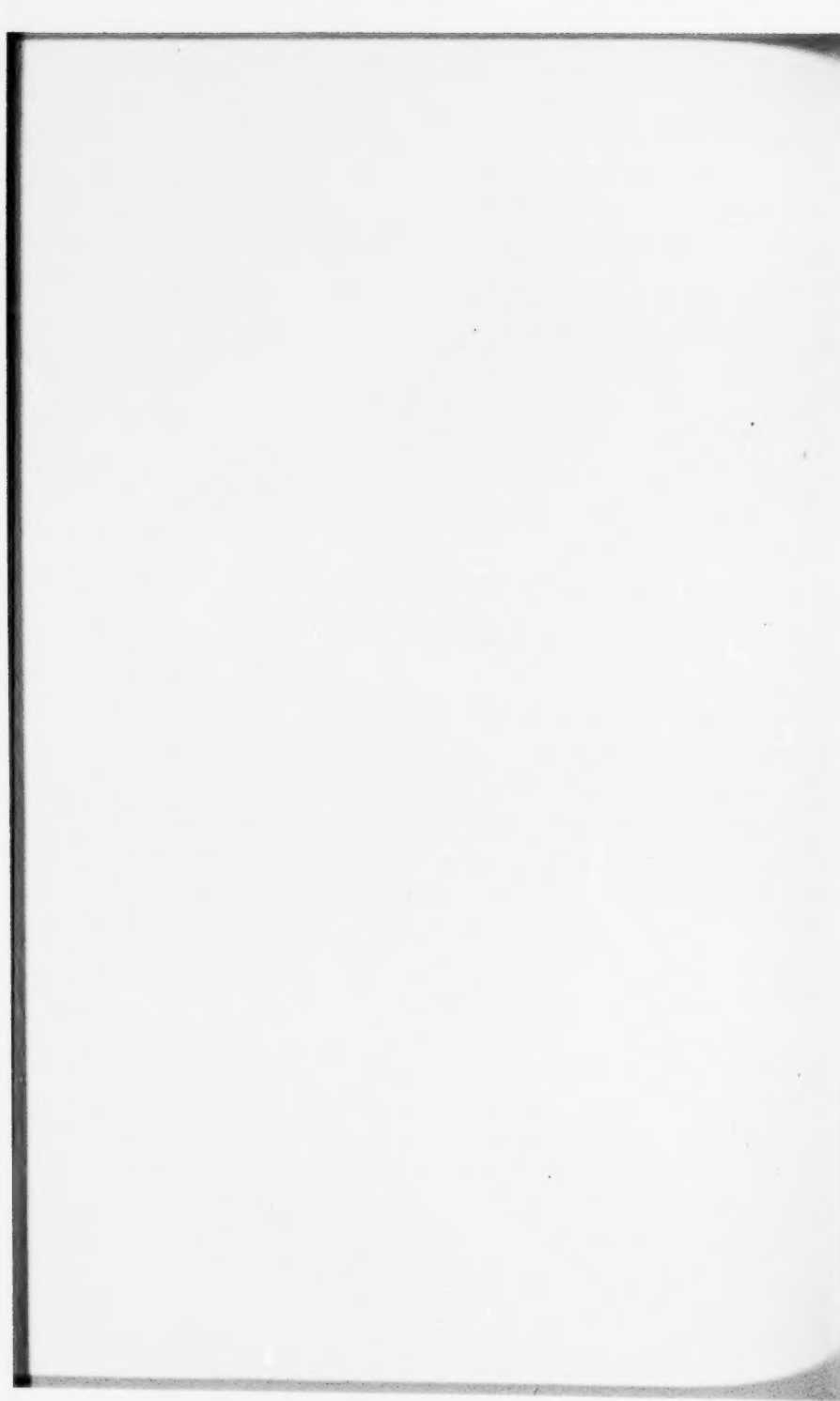
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VENDA C. ABRAMSON, _____ *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable the Chief Justice and the Associate
Justices of the Supreme Court of the United States:

Your petitioner, Mildred Mayo Deal, was the appellant
in the case of *Mildred Mayo Deal v. Venda C. Abramson*
in the Circuit Court of Appeals for the Eighth Circuit,
which court affirmed the decree of the District Court in
that case.

Your petitioner respectfully shows that the Circuit
Court of Appeals decided an important question of the

local law of Arkansas in conflict with the applicable decisions of the Supreme Court of Arkansas.

I.

Summary statement of the case.

This is a suit by Mildred Mayo Deal against Venda C. Abramson to recover an undivided one-half interest in a farm in Arkansas. The farm was owned by Tennie Mayo, who is the common source of title, and both parties claim under her will.

Tennie Mayo had only one child, Lawrence Mayo, whose wife was Kate Mayo. At the time she executed the will, and at the time of her death, Lawrence and Kate had no children.

Tennie Mayo's will was as follows:

"I give and bequeath all of my real estate of whatever description to my son Lawrence Mayo and his wife Kate Mayo and their heirs during their natural life time, to be used for their support and maintenance only as long as they shall live, with the express understanding that they are not to mortgage or sell the same. After the death of my said son Lawrence and his wife Kate Mayo and their heirs all of my real estate shall revert to my legal heirs." Rec 17

After the death of Tennie Mayo, Lawrence and Kate had one child, Nathan Mayo. Kate died and Lawrence remarried. There was only one child of his second marriage, Mildred Mayo, who is the plaintiff.

Lawrence and Kate conveyed the farm by warranty deed to Rudolph Abramson. Nathan Mayo also executed

a warranty deed to Rudolph Abramson. Rudolph Abramson devised the farm to the defendant, Venda C. Abramson.

Lawrence Mayo died February 16, 1937, leaving two children, Nathan C. Mayo, the child of the first marriage, and Mildred Mayo Deal, the child of the second marriage. The life estate in Lawrence and Kate Mayo terminated at Lawrence's death. His daughter, Mildred Mayo Deal, then brought this suit to recover an undivided one-half interest in the farm under her grandmother's will. No question of the statute of limitations is involved. *Rec 17*

On the termination of the life estate the will of Tennie Mayo, construed according to the Arkansas decisions, vested an undivided one-half interest in the farm in the testatrix's grandson, Nathan Mayo, which passed by his deed to the defendant, and an undivided one-half interest in her granddaughter, Mildred Mayo. Under the decision of the Circuit Court of Appeals in this case the granddaughter is disinherited and takes nothing.

If the decision is allowed to stand, the title to real property in Arkansas under wills similar to Tennie Mayo's will go to one claimant if it is adjudicated in a state court, and will go to an entirely different claimant if it is adjudicated in a federal court.

II.

Reason relied on for the allowance of the writ.

If the decision of the Circuit Court of Appeals in this case stands, it will create two antipodal rules controlling the testamentary disposition of real property in Arkansas. The Arkansas decisions hold that the inten-

tion of the testator, to be gathered from the whole will, must govern the disposition of his property, even though it runs counter to the ordinary rules which would otherwise control. The Circuit Court of Appeals held in this case that the rule in Shelley's case should govern, even though it defeated the clear intention of the testatrix.

III.

Wherefore your petitioner prays that a writ of *certiorari* issue under the seal of this court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding that court to certify and send to this court a full and complete transcript of the record in the proceedings of that court in *Mildred Mayo Deal v. Venda C. Abramson*, No. 12411, to the end that this case may be reviewed and determined by this court as provided by the statutes of the United States; and that the judgment of the United States Circuit Court of Appeals be reversed by this court, and for such further relief as to the court may seem proper.

Dated this 15th day of March, 1943.

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